

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ONONDAGA

INDEX NO.: 2012-1725

NICK'S GARAGE, INC.,

Plaintiff,

v.

Plaintiff designates
Onondaga County as the
place of trial

The basis of venue is:
Plaintiff's Place of Business

PROGRESSIVE CASUALTY INSURANCE
COMPANY,

Defendant.

SUMMONS

Plaintiff's Business Address:
638 West Genesee Street
Syracuse, New York 13204

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorney within 20 days of the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: March 30 2012

Defendant's Address:

Progressive Casualty Insurance Company
6300 Wilson Mills Road
Mayfield Village, Ohio 44143

Attorneys for Plaintiff

Office and Post Office Address

BOUSQUET HOLSTEIN PLLC

Formerly known as Green & Seifert, Attorneys, PLLC

Served

By

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

NICK'S GARAGE, INC.,

Plaintiff,

v.

COMPLAINT

Index No.: 2012-1725

PROGRESSIVE CASUALTY INSURANCE
COMPANY,

Defendant.

Plaintiff, Nick's Garage, Inc. ("Nick's Garage"), by and through its attorneys, Bousquet Holstein PLLC, as and for its Complaint against Progressive Casualty Insurance Company, ("Defendant"), hereby states and alleges as follows:

1. Plaintiff, Nick's Garage is a New York corporation with a principal place of business at 638 West Genesee Street, Syracuse, New York 13204.
2. Defendant is an insurance company organized under the laws of the state of Ohio, with a principal place of business at 6300 Wilson Mills Road, Mayfield Village, Ohio.
3. Defendant engages in the business of selling insurance in New York.

FACTS COMMON TO ALL CAUSES OF ACTION:

4. Plaintiff is the assignee of claims by the following persons ("Assignors"), each of whom was in a motor vehicle accident involving an insured of Defendant's as indicated below:

	Assignor	Defendant's Insured	Policy No.	Vehicle Vin No. (collectively, the "Vehicles")
i	Angelo, Michael	Angelo, Michael	06136013-0	4T1BF32KX5U603122
ii	Birnbaum, Irwin	Birnbaum, Irwin		4M2CU97108KJ42895
iii	Birnbaum, Irwin	Birnbaum, Irwin		4M2CU97108KJ42895

iv	Burgess, James	Burgess, James	45834352-0	1G1ZB5E13BF111151
v	Burgess, James	Burgess, James		1G1ZB5E13BF111151
vi	Christy, Daniel	Christy, Daniel	19854576-3	5TEUU42N85Z072626
vii	Cohen, Michael	Cohen, Michael	15218568-G	1GNET13H962268487
viii	Coogan, Eamon	Coogan, Eamon	18099497-6	JF1SG69627G725752
ix	Cornell, James	Cornell, James	19794899-8	2D4RN5D19AR135903
x	Cummings, Katrina	Cummings, Katrina	46045893-4	KMH DU46D37U152621
xi	Davey, Michael	Davey, Michael	46101503-1	1N4DL01D11C176345
xii	Delpha, Diane	Delpha, Diane	18182879-3	2G2WP552271101850
xiii	Granozio, Alex	Granozio, Alex		2HGFA16568H517537
xiv	Guntrum, Sara	Guntrum, Sara	20001567-7	5TDBT44A46S273569
xv	Hart, Christopher	Hart, Christopher	17842602-7	2G2WP522641256269
xvi	Heffernan, Susan	Heffernan, Susan	75035921-8	WVWAK73C88P045333
xvii	Hickes, Carol	Hickes, Carol	46434734-0	WAULC68E65A093712
xviii	Hollenbeck, Joshua	Hollenbeck, Joshua	46045893-2	3FAHP0HA1AR247482
xix	McFarland, Pamela	McFarland, Pamela	18158945-6	JHLRE48747C040451
xx	McGee, Michael	McGee, Michael	46187127-3	1FTPW14517FA76911
xxi	McLeod, Celestine	McLeod, Celestine	46411982-0	1GNDV23118D156076
xxii	O'Connor, Kelly	O'Connor, Kelly	46059680-4	2S3DA417086123139
xxiii	O'Connor, Kelly	O'Connor, Kelly	46059680-4	2S3DA417086123139
xxiv	Reschke, Christine	Reschke, Christine	18046560	1FAFP34P63W235797
xxv	Rivera, Emily	Rivera, Emily	46101351-1	3MEHM08169R600151
xxvi	Ross, Leslie	Ross, Leslie		KMH DU46D47U155852
xxvii	Saccocci, Mark	Saccocci, Mark	15853897-6	1G1AL15FX77258437
xxviii	Warner, Neil	Warner, Neil	19778876-3	1GNDT13S532258767
xxix	Wolfe, Chris	Wolfe, Chris		1B3HE78K97D236699
xxx	Difusco, Richard	Briggs, Gary		YF3FB42Y791016680
xxxi	Feyh, Julie	Revere, Garrett		JF2SH61699H784329
xxxii	Kidder, Robert	Kresse, Joseph		JNKC Y01F69M851104
xxxiii	Licamele, Danielle	Conklin, Paul		4A3AB56F77E022207
xxxiv	Manning, Daniel	Letourneau, Aubrey	46191918-1	JN8AS5MV9AW107049
xxxv	Martinez, Laurie	Melton, Emanuel		2HGES16354H567816
xxxvi	Moulter, Lee	Walsh, Timothy		KMDH4AEXCU321970
xxxvii	Pyrtle, Cynthia	Askew, Rachel		1FMYU94165KB08788
xxxviii	Schwarz, Timothy	Gasiorowski, Scott		1N4CL21E98C166298

xxxix	Spagnola, Mary	Stephens, Michele		1YVHP80C055M52722
xl	Thompson, Dana	Vescio, Samantha		1N4AL11E55C250356

5. At all relevant times to this Complaint, the relevant policies for each of Defendant's insureds listed above (collectively, the "Policies") were in effect.

6. Upon information and belief, the Assignors were involved in motor vehicle accidents resulting in property damage to the Vehicles (the "Accidents"), for which property damage claims were made against the Defendant as follows:

	Assignor	Policy No.	Claim No.:	Date of Loss
i	Angelo, Michael	06136013-0	08-4309045-01	3/11/2008
ii	Birnbaum, Irwin		10-4643050-01	10/19/2010
iii	Birnbaum, Irwin		11-5900605-01	1/4/2011
iv	Burgess, James	45834352-0	11-2946809-01	10/17/2011
v	Burgess, James		11-2357199-01	12/22/2011
vi	Christy, Daniel	19854576-3	08-3024941-01	8/13/2008
vii	Cohen, Michael	15218568-G	08-5641854-01	11/19/2008
viii	Coogan, Eamon	18099497-6	08-4530832-01	8/23/2008
ix	Cornell, James	19794899-8	10-1736448-01	9/9/2010
x	Cummings, Katrina	46045893-4	11-1700799-01	1/7/2011
xi	Davey, Michael	46101503-1	10-4200131-01	1/2/2010
xii	Delpha, Diane	18182879-3	07-4942477-01	11/19/2007
xiii	Granozio, Alex		11-4725071-01	6/1/2011
xiv	Guntrum, Sara	20001567-7	11-1508610-01	2/25/2011
xv	Hart, Christopher	17842602-7	08-5406690-01	2/21/2008
xvi	Heffernan, Susan	75035921-8	10-1542723-01	10/18/2010
xvii	Hickes, Carol	46434734-0	11-5035816-01	8/11/2011
xviii	Hollenbeck, Joshua	46045893-2	10-4803568-01	1/28/2010
xix	McFarland, Pamela	18158945-6	11-5344640-01	10/14/2011
xx	McGee, Michael	46187127-3	11-2529498-01	7/6/2011
xxi	McLeod, Celestine	46411982-0	10-3151019-01	12/12/2010
xxii	O'Connor, Kelly	46059680-4	11-5404467-01	2/1/2011
xxiii	O'Connor, Kelly	46059680-4	11-5404467-01	2/1/2011

xxiv	Reschke, Christine	18046560	08-1412118-01	4/4/2008
xxv	Rivera, Emily	46101351-1	11-4311779-01	3/21/2011
xxvi	Ross, Leslie		122401907	1/13/2012
xxvii	Saccocci, Mark	15853897-6	10-4507270-01	2/25/2010
xxviii	Warner, Neil	19778876-3	08-3119614-01	6/2/2008
xxix	Wolfe, Chris		11-3508274-01	2/25/2011
xxx	Difusco, Richard		11-1636188-02	8/1/2011
xxxi	Feyh, Julie		11-3739169-02	9/1/2011
xxxii	Kidder, Robert		10-5951565-02	12/17/2010
xxxiii	Licamele, Danielle		10-4226057-02	7/2/2010
xxxiv	Manning, Daniel	46191918-1	10-1416833-01	5/3/2010
xxxv	Martinez, Laurie		11-5103861-02	1/27/2011
xxxvi	Moulter, Lee		11-3357518-02	12/23/2011
xxxvii	Pyrtle, Cynthia		11-2804908-02	2/3/2011
xxxviii	Schwarz, Timothy		10-4312118-05	3/30/2010
xxxix	Spagnola, Mary		11-2456583-02	12/18/2011
xl	Thompson, Dana		10-4749884-02	12/9/2010

7. In the case of Assignors (i) – (xxix) (the "First Party Assignors"), the respective Policies provided insurance coverage for property damage to the automobiles listed above as indicated (the "Vehicles").

8. For Assignors (xxx) – (xl) (the "Third Party Assignors"), the Accident was caused solely by the negligence of Defendant's Insured or another person operating the Vehicle with the permission of Defendant's Insured, and Defendant admitted liability by providing partial payment for repairs on the Assignors' Vehicles.

9. In each case, Defendant was obligated to provide enough coverage to restore the Vehicles to the same condition they were in immediately prior to the Accidents.

10. Each of the Assignors took their respective Vehicle to Plaintiff for repairs.

11. Each of the Assignors made Plaintiff his/her Designated Representative as provided for by regulation.

12. With respect to each of the Vehicles, Plaintiff provided the Defendant with an Estimate that reflected the amount necessary to return the respective Vehicle to its pre-Accident condition.

13. With respect to each of the Vehicles, the Defendant provided Plaintiff with copies of its estimates for repairs (the "Insurer Estimate").

14. The Insurer's Estimate was insufficient to repair the Vehicles to their pre-Accident condition and in compliance with the New York State Insurance Laws and Regulations.

15. On or about the following dates, Plaintiff served upon Defendant Notices of Deficiencies (the "Notice") informing Defendant that there were open items and that an agreed upon amount had not been reached for the repairs:

	Assignor	Policy No.	Date of Notice of Deficiency
i	Angelo, Michael	06136013-0	3/24/2008
ii	Birnbaum, Irwin		12/8/2010
iii	Birnbaum, Irwin		3/1/2011
iv	Burgess, James	45834352-0	11/8/2011
v	Burgess, James		1/16/2012
vi	Christy, Daniel	19854576-3	9/24/2008
vii	Cohen, Michael	15218568-G	12/4/2008
viii	Coogan, Eamon	18099497-6	10/2/2008
ix	Cornell, James	19794899-8	10/5/2010
x	Cummings, Katrina	46045893-4	1/25/2011
xi	Davey, Michael	46101503-1	3/2/2010
xii	Delpha, Diane	18182879-3	12/10/2007
xiii	Granozio, Alex		6/27/2011
xiv	Guntrum, Sara	20001567-7	3/31/2011
xv	Hart, Christopher	17842602-7	2/27/2008

xvi	Heffernan, Susan	75035921-8	11/9/2010
xvii	Hickes, Carol	46434734-0	10/26/2011
xviii	Hollenbeck, Joshua	46045893-2	3/29/2010
xix	McFarland, Pamela	18158945-6	11/29/2011
xx	McGee, Michael	46187127-3	7/26/2011
xxi	McLeod, Celestine	46411982-0	1/12/2011
xxii	O'Connor, Kelly	46059680-4	3/4/2011
xxiii	O'Connor, Kelly	46059680-4	10/31/2011
xxiv	Reschke, Christine	18046560	4/10/2008
xxv	Rivera, Emily	46101351-1	4/18/2011
xxvi	Ross, Leslie		1/31/2012
xxvii	Saccocci, Mark	15853897-6	4/5/2010
xxviii	Warner, Neil	19778876-3	6/24/2008
xxix	Wolfe, Chris		3/22/2011
xxx	Difusco, Richard		9/6/2011
xxxi	Feyh, Julie		10/14/2011
xxxii	Kidder, Robert		2/21/2011
xxxiii	Licamele, Danielle		7/19/2010
xxxiv	Manning, Daniel	46191918-1	5/18/2010
xxxv	Martinez, Laurie		2/24/2011
xxxvi	Moulter, Lee		1/23/2012
xxxvii	Pyrle, Cynthia		2/18/2011
xxxviii	Schwarz, Timothy		4/27/2010
xxxix	Spagnola, Mary		1/19/2012
xl	Thompson, Dana		12/28/2010

16. Defendant impeded and delayed fair settlement by, among other things, dictating and allocating price allowances, setting arbitrary price caps, refusing to negotiate labor rates, refusing to pay proper amounts for paint and parts invoices, and in many cases by failing to inspect or re-inspect the Vehicles within the time frames specified by regulation.

17. As a result of Defendant's actions and/or inaction as set forth above, Defendant failed to negotiate in good faith pursuant 11 NYCRR Part 216 ("Regulation 64").

Payment and Amount Owed

18. Plaintiff completed the repairs to the Vehicles to restore them to the same condition they were in immediately prior to the loss.

19. In each of the above referenced claims of the Assignors, Defendant failed to pay Plaintiff for the full amount required to put the respective Vehicle into its pre-accident condition.

20. In total, deficiencies of the following amounts remain due and owing to Plaintiff as a result of its repairs to the Vehicles (the "Deficiency").

	Assignor	Policy No.	Deficiency Amount
i	Angelo, Michael	06136013-0	\$1,973.69
ii	Birnbaum, Irwin		\$2,878.31
iii	Birnbaum, Irwin		\$3,082.71
iv	Burgess, James	45834352-0	\$3,856.31
v	Burgess, James		\$2,304.61
vi	Christy, Daniel	19854576-3	\$3,876.22
vii	Cohen, Michael	15218568-G	\$1,938.34
viii	Coogan, Eamon	18099497-6	\$2,849.95
ix	Cornell, James	19794899-8	\$2,260.28
x	Cummings, Katrina	46045893-4	\$2,222.53
xi	Davey, Michael	46101503-1	\$1,732.02
xii	Delpha, Diane	18182879-3	\$3,035.42
xiii	Granozio, Alex		\$1,563.75
xiv	Guntrum, Sara	20001567-7	\$2,578.91
xv	Hart, Christopher	17842602-7	\$508.47
xvi	Heffernan, Susan	75035921-8	\$2,607.12
xvii	Hickes, Carol	46434734-0	\$2,716.63
xviii	Hollenbeck, Joshua	46045893-2	\$4,482.22
xix	McFarland, Pamela	18158945-6	\$2,387.90
xx	McGee, Michael	46187127-3	\$3,208.60
xxi	McLeod, Celestine	46411982-0	\$1,159.80
xxii	O'Connor, Kelly	46059680-4	\$2,816.34
xxiii	O'Connor, Kelly	46059680-4	\$157.93

xxiv	Reschke, Christine	18046560	\$3,911.04
xxv	Rivera, Emily	46101351-1	\$2,372.33
xxvi	Ross, Leslie		\$1,707.09
xxvii	Saccocci, Mark	15853897-6	\$2,414.48
xxviii	Warner, Neil	19778876-3	\$2,265.33
xxix	Wolfe, Chris		\$1,773.85
xxx	Difusco, Richard		\$2,302.87
xxxi	Feyh, Julie		\$3,288.12
xxxii	Kidder, Robert		\$1,039.29
xxxiii	Licamele, Danielle		\$1,655.02
xxxiv	Manning, Daniel	46191918-1	\$3,297.72
xxxv	Martinez, Laurie		\$1,302.38
xxxvi	Moulter, Lee		\$2,146.59
xxxvii	Pyrtle, Cynthia		\$2,066.98
xxxviii	Schwarz, Timothy		\$2,640.11
xxxix	Spagnola, Mary		\$2,003.17
xl	Thompson, Dana		\$1,750.62

FIRST CAUSE OF ACTION

21. Plaintiff repeats and realleges each and every allegation heretofore made in paragraphs 1 through 20 as if fully set forth herein.

22. Defendant has refused to pay the Deficiencies for repairs on the First Party Assignors' Vehicles and thereby has violated its obligation under the Policies and New York Insurance Law and regulations to repair the Vehicles to their pre-accident condition.

23. As a result of the foregoing, Plaintiff is entitled to damages from Defendant in the amount of \$70,642.18, together with interest at the statutory rate.

SECOND CAUSE OF ACTION

24. Plaintiff repeats and realleges each and every allegation heretofore made in paragraphs 1 through 23 as if fully set forth herein.

25. Plaintiff has provided automobile services on each of the Vehicles for which it is entitled to compensation.

26. Defendant knew Plaintiff expected compensation from Defendant in exchange for these services, in light of the estimates done by both parties in connection therewith.

27. Defendant accepted the benefit of these services in that the services were done to fulfill Defendant's obligation to return the Vehicles to their pre-accident condition.

28. Plaintiff is entitled to the reasonable value of its services from Defendant, in an amount to be determined at trial, but estimated by Plaintiff to be \$94,135.05.

THIRD CAUSE OF ACTION

29. Plaintiff repeats and realleges each and every allegation heretofore made in paragraphs 1 through 28 as if fully set forth herein.

30. Plaintiff has had numerous dealings with Defendant over the years involving claims by consumer customers of Plaintiff's against Defendant for coverage for automobile repairs.

31. Defendant frequently provides a lower estimate of the cost of repairs than that which is actually required to repair a given vehicle to its pre-loss condition.

32. With respect to each of the Assignors and Accidents listed above, Defendant limited the costs it would cover to repair the Vehicles to less than the full amount necessary to repair the Vehicles to their pre-Accident condition.

33. Defendant's limitation of costs was a material deceptive action because it knew when it made its limitation that it was not providing the full amount necessary to restore the Vehicles to their pre-Accident condition.

34. Defendant's failure to negotiate all elements of the claim as required by regulation constitutes a deceptive business practice within the meaning of General Business Law §349.

35. Plaintiff has been injured because Plaintiff has not been paid the full cost of the repairs that were completed on the Vehicles.

36. As a result of the forgoing, Defendant has repeatedly violated General Business Law §349 and Plaintiff is entitled to \$1000 and reasonable attorney fees as damages for each violation.

WHEREFORE, Plaintiff respectfully submits that this Court enter an Order and Judgment awarding Plaintiff the following:

- a) On its First Cause of Action in the amount of \$70,642.18;
- b) On its Second Cause of Action in the amount of \$94,135.05;
- c) On its Third Cause of Action in the amount of \$40,000.00 plus attorney fees, and;
- d) Such other and further relief as the Court deems just and proper.

Dated: March 30, 2012

BOUSQUET HOLSTEIN PLLC
Formerly known as Green & Seifter, Attorneys, PLLC



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